

215-02

JO ANNE CRAIG, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE CITY :
OF TRENTON, MERCER COUNTY, :
RESPONDENT. :
_____:

SYNOPSIS

Petitioning First Steps Academy, an early childhood education provider, charged that the Board improperly pulled Abbott-funded students from its institution and sought reversal of this action. The Board contended that it terminated its agreement with First Steps “due to material breach.” (Due to the arrest of petitioner for fraud and the confiscating of the institute’s records, the Board terminated the contract on April 9, 2001, for “failure to comply with applicable federal, state, or local requirements.”) The contract was a one-year contract expiring on June 30, 2001.

The ALJ concluded that the dispute was a contract action for money damages and did not arise under school laws, and that the issue to be decided was whether under the terms of the agreement or by reason of overriding public policy, the Trenton BOE acted properly in terminating the agreement. The ALJ concluded that the dispute belonged in the Superior Court as a civil action for damages. Since school laws were not at issue, the ALJ dismissed the matter.

The Commissioner affirmed with modification the ALJ’s determination to dismiss the petition. The Commissioner fully agreed that petitioner’s specific claims and the Board’s defense to them constituted a contract dispute properly heard in Superior Court, rather than an education law dispute cognizable before the Commissioner. However, because the ALJ concluded that *all* issues arising from a termination of the contract at issue would properly be raised in Superior Court, the Commissioner clarified that, *had it been raised herein*, the question of whether the contract between petitioner and the Board was properly terminated pursuant to the *specific requirements of the termination subsection for failure to provide early childhood education services* of said agreement would constitute an issue properly cognizable before the Commissioner. Finally, the Commissioner rejected petitioner’s claims concerning nonrenewal of the contract as time barred and moot. The petition was dismissed.

May 30, 2002

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The record and Initial Decision of the Office of Administrative Law in this matter have been reviewed. Petitioner filed exceptions 11 days out of time, and, as such, they were not considered in rendering the within decision. *See, N.J.A.C. 1:1-18.4.*¹

Upon review, the Commissioner affirms, with modification, the Administrative Law Judge's (ALJ) determination to dismiss the petition. The Commissioner fully agrees that petitioner's claims constitute a contract action properly brought in Superior Court, rather than an education law dispute cognizable before the Commissioner. As determined by the ALJ, "[t]he issue to be decided is whether under the terms of the agreement or by reason of overriding public policy, the Trenton BOE acted properly in terminating that agreement on April 9" (Initial Decision at 4), thus raising the question of whether, pursuant to *contract* law, the agreement was properly terminated by the Board, a question not encompassed within educational law over which the Commissioner has jurisdiction pursuant to *N.J.S.A. 18A:6-9*, but rather to be

¹ Because the exceptions were not considered, neither was respondent's reply to them.

adjudicated in Superior Court. *See, Picogna v. Board of Educ.*, 249 N.J. Super. 332 (App. Div. 1991); *South Orange-Maplewood Ed. Assn. v. Bd. of Ed. of So. Orange*, 146 N.J. Super. 457 (App. Div. 1977).

However, contrary to the analysis of the ALJ, who concluded that *all* issues arising from a termination of the contract at issue would properly be raised in Superior Court, the Commissioner clarifies that, *had it been raised herein*, the question of whether the contract between Petitioner Craig and the respondent Board was properly terminated pursuant to the *specific requirements of the termination subsection* of said agreement would constitute an issue properly cognizable before the Commissioner.

Specifically, the contract at issue sets forth, in subsection V, certain provisions governing termination of the contract. (*See, Exhibit J-1 at 4.*) This subsection requires ten days notice to the provider to correct deficiencies in the event the terms of the agreement or applicable Federal, State or local requirements are not met. The subsection also explicitly states that appeals of the Board's termination of the contract *pursuant to subsection V* are to the Commissioner in accordance with N.J.A.C. 6A:3. (*Ibid., emphasis supplied*)

Therefore, the Commissioner clarifies herein that subsection V of the contract at issue governs termination of the contract for *failure to satisfy provisions* thereof, or Federal, State or local requirements, *pertaining to the provision of early childhood educational services to children in the Trenton School District*, which is an Abbott district. As such, the Commissioner concludes that he was properly vested by the terms of the contract with jurisdiction over disputes arising from termination of the contract in accordance with subsection V because it concerns termination of the contract

for *educational* reasons; *i.e.* failure to properly provide early childhood services. Such issues, because they are educational in nature, not contractual, are within the scope of the Commissioner's jurisdiction. Thus, appeal of a contract termination *specifically effectuated in accordance with subsection V thereof* would properly be filed with the Commissioner.

In this case, the Board does not argue that it terminated the contract pursuant to subsection V for failure to comply with the terms of the contract or applicable policies pertaining to the provision of early childhood services in this Abbott district. Rather, the Board has conceded that it did not terminate pursuant to subsection V, and, instead, has argued that it properly terminated the agreement based on a material breach on the part of petitioner because the arrest of petitioner and her daughter and the removal of the records of the pupils petitioner was serving in her facility resulted in petitioner becoming legally unable to fulfill the contract. (*See*, respondent's Post-Hearing Brief, dated January 17, 2002.) Petitioner's material breach, the Board argues, is what permitted immediate termination of the contract. (*Ibid.*) Therefore, as held by the ALJ, the matter at hand is a contractual dispute over which the Commissioner lacks jurisdiction, and the ALJ's dismissal of the petition for that reason must be affirmed.

Finally, the Commissioner rejects petitioner's arguments in its submissions below seeking renewal of the contract. Initially, the Commissioner notes that petitioner never filed a petition or amended petition seeking renewal of the contract, and that the only relief sought in the petition was a stay of the termination of the agreement for the 2000-2001 school year at issue herein. Moreover, it is clear from the terms of the contract that renewal is at the discretion of the Board, and that the Board did

not notify petitioner of its intent to renew pursuant to subsection III of the agreement. (*See*, Exhibit J-1 at 4.) Likewise, because petitioner never asserted claims concerning the nonrenewal of the contract in the petition, and, considering that one year has passed since the Board declined to renew the contract, the Commissioner determines that such claims are time barred and moot.

Based on the foregoing, the ALJ's Initial Decision recommending dismissal of the petition, as modified herein, is adopted as the final decision in this matter.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2002

Date of Mailing: June 3, 2002

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.* within 30 days of filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.